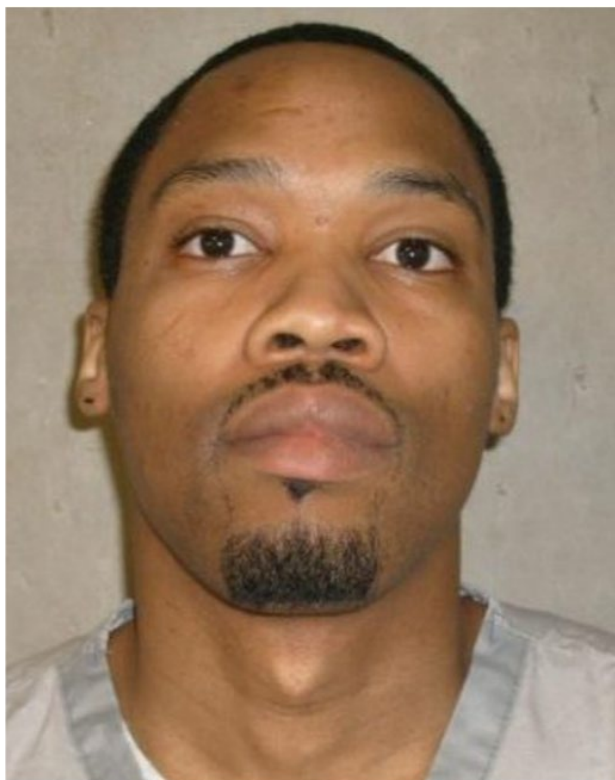

**TO THE HONORABLE MEMBERS OF THE OKLAHOMA PARDON AND PAROLE
BOARD AND THE HONORABLE OKLAHOMA GOVERNOR J. KEVIN STITT**



JULIUS DARIUS JONES
APPLICATION FOR EXECUTIVE CLEMENCY

October 15, 2021

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I. Introduction

Julius Darius Jones is facing execution by the State of Oklahoma on November 18, 2021 for a crime that overwhelming evidence establishes he did not commit. Because of fundamental breakdowns in the system tasked with deciding Julius's guilt, the jurors who voted to convict and sentence Julius to die did so based on a fundamentally flawed and incomplete record that left them without powerful evidence of Julius's innocence. Had that evidence been presented, we know from the sworn affidavits of three jurors who served on Julius's jury that it could have made the critical difference. (Commut'n Ex. 27, ¶ 3; Commut'n Ex. 28, ¶ 4; Commut'n Ex. 29, ¶¶ 10–12.)¹

The jury never knew that Julius was at home with his family at 9:30 p.m. on July 28, 1999 when Paul Howell was tragically shot in the driveway of his parents' Edmond home and robbed of his GMC Suburban. The jury was never shown a photograph of Julius taken just a few days before Mr. Howell's murder that would have proved that Julius could not have been the person who the only eyewitness to the crime identified as the gunman. The jury never knew that the prosecution's case against Julius was built on the testimony of longtime professional confidential

¹ On September 13, 2021, a hearing was held before this Honorable Board on Julius's application for commutation of his death sentence. The record submitted by the various parties in connection with those commutation proceedings was developed over many months and consisted of thousands of pages of documents submitted by counsel for Julius, the Oklahoma County District Attorney's Office, and the Office of the Oklahoma Attorney General. In support of Julius's request for commutation of his death sentence, counsel for Julius submitted 120 documentary and audio/visual exhibits. (*See* Clemency Appx. 0001–0023 (index of exhibits submitted in support of Julius's request for commutation of his death sentence).) Julius incorporates by specific reference here and throughout this Clemency Application the entire record developed by all of the parties throughout the commutation proceedings. The exhibits submitted in support of Julius's request for commutation of his death sentence are cited herein using "Commut'n" followed by "Ex.", the exhibit number, and the page/paragraph number(s). The exhibits submitted by the Oklahoma County District Attorney's Office and Oklahoma Attorney General's Office in protest of Julius's commutation request are cited herein using "DA Commut'n" or "AG Commut'n" followed by "Appx.", the appendix number, and the page/paragraph number(s). Additional documents included in the Appendix that accompanies this Clemency Application are cited herein using "Clemency Appx.", followed by the appendix number.

informants for the Oklahoma City and Edmond Police Departments and for the Oklahoma County District Attorney's Office under Bob Macy. The jury never knew that the prosecution promised Julius's co-defendant, Christopher Jordan—a known member of the Crips gang who fit the eyewitness description of Mr. Howell's murderer—that he would spend just 15 years in prison in exchange for his testimony blaming Julius for that and other crimes. And the jury never knew that Julius, who turned 19 years old just three days earlier, helped a man named Ladell King move the stolen GMC Suburban to the southside of Oklahoma City the day after Mr. Howell was shot and killed but had nothing to do with Mr. Howell's murder the day prior.

The jury never knew any of this because the adversarial testing process failed. It failed because Julius's trial lawyers—three inexperienced, overworked, and under-resourced public defenders who had never handled a death penalty case before being assigned to represent Julius—failed to put the prosecution's case to the test or present a single witness in Julius's defense at the guilt/innocence stage of his trial. *Compare Strickland v. Washington*, 466 U.S. 668, 687 (U.S. 1984) (explaining that capital defense counsel's role is “to ensure that the adversarial testing process works to produce a just result”). It also failed because the Oklahoma County Assistant District Attorneys who prosecuted Julius committed misconduct that corrupted the very framework within which Julius's trial proceeded, including by hiding their use of professional confidential informants; failing to disclose the full extent of the benefits conferred upon and promised to their witnesses in exchange for testifying against Julius; misinforming the jury that Jordan would spend at least 35 years in prison when, in fact, they had promised him release in just 15 years; and failing to disclose the prior felony convictions of a white juror who voted to convict and sentence Julius to death despite having eliminated black people from the jury pool on that very basis.

Beyond the evidence of Julius's innocence that the jury never heard, junk science and racial prejudice also undermined the fundamental fairness of Julius's trial. In June 2019, a juror who served on Julius's jury came forward to reveal in a sworn statement that:

During the trial I went to an individual who I believed to be the bailiff about a comment I had heard another juror make while we were in the jury room during the break. I remember telling the bailiff that the comment made was something to the effect of, 'They just need to take this nigger and shoot him, and take him and bury him underneath the jail.'

(Comm't'n Ex. 29, ¶ 4.)

These and other systemic failures led to Julius's wrongful conviction. They are the very same failures that were identified in the 2017 bipartisan Report of the Oklahoma Death Penalty Review Commission as creating "the unacceptable risk of executing the innocent[.]" Okla. Death Penalty Review Comm'n, The Report of the Okla. Death Penalty Review Comm'n, The Constitution Project, viii (Apr. 25, 2017), https://archive.constitutionproject.org/wp-content/uploads/2017/05/OKDPRC_Final.pdf.

If Julius is executed, the State of Oklahoma will be killing an innocent man.

II. The Crime: Orchestration, Implementation, & Aftermath

A. Wednesday, July 28, 1999: Paul Howell is tragically shot, his GMC suburban stolen, and an eyewitness describes the shooter

At 9:30 p.m. on July 28, 1999, Paul Howell was shot in the driveway of his parents' home in Edmond, Oklahoma. (Clemency Appx. 0057.)² Mr. Howell's adult sister, Megan Tobey, and his two young daughters were with him at the time. (Clemency Appx. 0041–0046, 0055–0056.)

² Counsel for Julius are unable to append all of the transcript excerpts cited herein due to the 150-page limit on materials that may be included with this Clemency Application. Counsel have attempted to include as many transcript excerpts as possible consistent with the current space limitations. If, however, full transcripts are desired, counsel will make them available upon request.

They had just pulled into the driveway of the home belonging to Mr. Howell's parents and were passengers in Mr. Howell's 1997 GMC Suburban. (Clemency Appx. 0046–0048.) Mr. Howell turned off the car's engine and opened the driver-side door. (Clemency Appx. 0047.) Ms. Tobey, meanwhile, gathered her belongings and instructed her nieces to do the same. (*Id.*) She opened the passenger-side door and stepped out of the vehicle when she heard a gunshot. (*Id.*) She also heard someone asking for the vehicle's keys. (*Id.*)

According to Ms. Tobey, she “took a fast glance back” and saw a black man who she described as wearing **jeans**,³ a white t-shirt, a black stocking-cap, and a red bandana over his face. (Clemency Appx. 0047, 0050–0054.) Critically, Ms. Tobey also described the shooter as having half an inch of hair sticking out from underneath the stocking cap. (*Id.*; Clemency Appx. 0052 (Ms. Tobey testifying “Yes” when asked whether the shooter “had hair sticking out from the sides[,]” and also testifying “Yes” in response to the question, “So there was about a half an inch sticking out?”)); Clemency Appx. 0054 (Ms. Tobey testifying “Yes” in response to the question, “Ma’am, but you are sure that there was at least a half an inch of hair sticking out from underneath the cap?” (emphasis added)).) The gunman stood in the doorway of the driver's side of the vehicle, was bent over the steering wheel, and held keys in his left hand. (Clemency Appx. 0047, 0050, 0052–0053.) Ms. Tobey rushed her nieces towards the house and heard the gunman yell “stop,” along with another gunshot. (Clemency Appx. 0047–0049.) Mr. Howell died at approximately 1:45 a.m. the following morning. (Clemency Appx. 0058–0061.)

³ Contrary to Ms. Tobey's eyewitness description, Ladell King—a confidential informant, self-described “car thug,” and witness for the prosecution—claimed to see Julius shortly after 9:30 p.m. on the evening of July 28, 1999 driving a Suburban and wearing “**jogging pants**.” (Tr. V at 141-46, 157-58 (emphasis added); Clemency Appx. 0065; Commut'n Ex. 62, ¶¶ 4–6.)

Days prior to the tragic events of July 28, 1999, Ladell King and Kermit Lottie—two career criminals who were involved in auto-thefts and moving stolen auto parts in the Oklahoma City metro area—had discussed getting “GMC products.” (Clemency Appx. 0066; Tr. V at 242; Commut’n Ex. 62, ¶¶ 5–6; Commut’n Ex. 92 at 16–17 (Christopher Jordan telling police that “Kermit, Kermit and this Mexican man got chop shops on [the] south side . . . I know he did some Fed time for some chopping cars like not too long ago he had just got out not too long ago for chopping cars” and that a “‘burban’ run like \$4,000, \$5,000 dollars”).)

Earlier in the day on July 28, 1999, Edmond resident Eckie Prater saw Jordan (who Prater knew personally from the time Jordan and his family lived in Edmond) with someone who fit the description of Ladell King scoping out a residential home in Edmond known to have Suburbans parked in the driveway. (Clemency Appx. 0029 (Prater testifying that in July 1999 “I was living in Edmond” and affirming that he “was familiar with an individual or a family by the name of Jordan”); Clemency Appx. 0031–0032 (Prater testifying that he lives on Aries Road and Chris Jordan’s family “also lived on Aries Road on the north side”); Clemency Appx. 0035 (Prater affirming that he “know[s] a young man by the name of Christopher Jordan” and “have seen him, yes[]”).) According to Prater, on July 28, 1999 he saw Jordan with someone who was “larger than [him] . . . half a head higher” driving around in “a copper, bronze metallic [sic] ’72, two door, Cutlass Supreme” outside of a home in Edmond known to park Suburbans. (Clemency Appx. 0030, 0033–0036 (Prater testifying that the person with Jordan was more “muscular” and “bigger” than Jordan in “[b]ody appearance” and “size”).)

In contrast to Julius, who could not have been “half a head higher” than Jordan because Julius was approximately Jordan’s height and weighed 10 pounds less than Jordan at the time (*see* Commut’n Ex. 100 (reflecting that on Aug. 2, 1999, Julius was 5’9” and weighed 160 pounds); *see*

also Clemency Appx. 0067–0068(reflecting that on Aug. 2, 1999, Jordan was 5’7” and weighed 170 pounds)), King was much larger than Jordan at 6’1” and 240 pounds (Clemency Appx. 0069–0072).)

Beyond being professionals in auto-theft, at the time of Mr. Howell’s murder King and Lottie were also longtime confidential informants for the Edmond and Oklahoma City Police Departments and for the Oklahoma County District Attorney’s Office under Bob Macy. Lottie had been a confidential informant since at least 1995 when he helped the Oklahoma County District Attorney’s Office secure death sentences against Paris Powell and Yancy Douglas, both of whom were later exonerated. (*See* Commut’n Ex. 58 at 47; *see also* Commut’n Ex. 114 at 16 (Lottie stating that Oklahoma City police officers and “a detective” frequented his auto shop).) King, meanwhile, had been an informant for the Edmond Police Department since the mid-1980’s. Former detective with the Edmond Police Department (“EPD”) Dennis Dill has revealed in a sworn statement that:

As a detective with EPD, I developed an informant by the name of Ladell King, who also went by the name “Day Day.” I began working with Ladell in the mid-1980’s.

Ladell King was a career criminal when he began to work with me as my informant. His main area of criminal activity was auto theft. He was a master. Ladell knew, because I told him, that by becoming a police informant he could give up information on other criminals, his cooperation would then be shared with the District Attorney, and he could get deals on his own charges or avoid charges altogether.

...

In his capacity as my informant, . . . Ladell told me that he had a crew that worked with him and some of them worked at vehicle dealers, obtained keys to vehicles, and would set up ramps to drive the stolen vehicles across the security barriers. Ladell also told me that he would take orders for certain vehicles to steal both for chop shops and for people who wanted their vehicle stolen to collect insurance.

(Commut'n Ex. 62, ¶¶ 4–6.) According to Detective Dill, “Ladell worked with gangs to fulfill his shopping list for stolen vehicles. In other words, Ladell would provide gangs with a list of the cars he wanted stolen, and the gang’s members would steal and bring them to him.” (Clemency Appx. 0073, ¶ 6.) Christopher Jordan was one such gang member and, according to police reports, was “known” to police at the time of Mr. Howell’s murder as a member of the “Rollin 60’s Crips.”⁴ (Commut'n Ex. 93.)

In fact, the week prior to Mr. Howell’s carjacking and murder, a Mercedes-Benz was carjacked at gunpoint outside of the Hideaway Pizza Restaurant in Oklahoma City, Oklahoma. According to police reports, the victim of that robbery, Anand Lapsi, described the gunman as “a black male wearing a black ball cap and **blue bandana**” who said “give me the keys, give me the keys[,] as the suspect pointed the gun at him.” (Clemency Appx. 0074-.) A subsequent police search of Jordan’s 1972 Oldsmobile Cutlass⁵ revealed “1 Keyless entry remote for Mercedes Benz” and “1 blue bandana”—items identified by the Hideaway robbery victim. (Commut'n Ex. 85 at 9.)

In a 2003 interview with investigator Brenda McCray, Jordan revealed that Oklahoma County prosecutors had threatened to prosecute him for the Hideaway armed car robberies unless he cooperated with the State’s prosecution of Julius. Ms. McCray states in a sworn affidavit:

That regarding the robberies which took place at Hideaway Pizza on July 21, 1999 and July 22, 1999, Mr. Jordan told this investigator that Oklahoma County prosecutors advised him that they were in possession of video surveillance footage depicting him;

⁴ By contrast, Julius—who had prior convictions for mostly petty thefts that were initially deferred or suspended, and ultimately accelerated—was not a gang member at the time of Mr. Howell’s murder which resulted in trial counsel objecting to any gang references being made at trial based on the fact that “[t]here is going to be no evidence in this case that my client was involved in a gang[.]” (Tr. VII at 180.)

⁵ Jordan admitted that the 1972 Cutlass belonged to him in an interview with Edmond Detectives Tony Fike and Theresa Pfeiffer. (Commut'n Ex. 92 at 5.)

That Mr. Jordan told this investigator that an Oklahoma County assistant district attorney threatened him with prosecution in the Hideaway robberies if he did not “cooperate[.]”⁶

...

That to my knowledge, Mr. Jordan has never been charged in either Hideaway incident.

(Communit’n Ex. 14, ¶¶ 6–7, 9.)

B. Thursday, July 29, 1999: Jordan disappears, King enlists Julius’s help moving the Suburban to Lottie’s chop shop on the southside, and Jordan spends the night at the Jones home setting Julius up to take the fall for murder

According to Jordan’s then-girlfriend Monica Pendleton, following the Edmond shooting Jordan took her to a lake where he appeared distraught and told her there was something he wanted to tell her but couldn’t. (Communit’n Ex. 70, ¶ 4(b).) Meanwhile King, unable to locate Jordan, paged Julius looking for him. (Parole Interview Questionnaire at 2A.) Julius recounts that:

Sometime during the day, Ladell started [to] page me looking for Chris. I told Ladell I didn’t know where Chris was, and he asked me to help move a car with him since he could not reach Chris. Ladell said he would give me something (which I understood to be money) if I helped him. I needed money so I agreed and Ladell picked me up around the corner from my parents’ house in a red Firebird. Ladell kept asking me if I knew where Chris was.

(Parole Interview Questionnaire at 2A.)

King drove Julius to his apartment where the Suburban was parked. (*Id.*) King asked Julius to follow him in the Suburban. (*Id.*) Aware that the Suburban was likely stolen “based on stories I’d heard from Ladell about how he would steal cars and change serial numbers,” Julius refused to drive the vehicle. (*Id.*) “Ladell instead drove the Suburban and I followed him in his car.” (*Id.*)

⁶ Jordan ultimately cooperated with prosecutors by testifying that Julius murdered Mr. Howell (Tr. VIII at 173) and had perpetrated the Hideaway armed car robberies as well (Tr. XI at 134–35, 145–46).

Julius followed King to the southside where King parked the Suburban outside of a small store called Central Grocery located just four blocks from Lottie's chop shop. (*Id.*; Tr. V at 170–71.) King went inside the store to “buy a pop and a bag of chips” and Julius accompanied him. (Parole Interview Questionnaire at 2A; Tr. V at 173.) King testified that he was fully aware that Central Grocery had security cameras at the time and denied “ever discuss[ing] the fact that there was a security camera at that store” with Julius. (Tr. V at 177.)

After leaving the grocery store, King drove his Firebird over to Kermit Lottie's chop shop with Julius in the passenger seat. (*See* Parole Interview Questionnaire at 2A; Tr. V at 79.) King went into the garage while Julius waited in the car. (Parole Interview Questionnaire at 2A.) Julius recalls that:

Ladell returned 10 or 15 minutes later and looked spooked. We drove in silence back to the grocery store where the Suburban was parked and Ladell sat parked behind it for several moments as if thinking. Ladell said the garage didn't want the Suburban because there was ‘a body on the truck,’ or something like that. I didn't know what he was talking about, but I had a bad feeling and should have gone to the police, but I didn't.

Ladell seemed obsessed with finding Chris so I suggested he (Ladell) look for him at the Macklanburg Recreational Center where we played ball. We saw Chris's Cutlass parked outside and Ladell walked in. I walked into the gym after Ladell and could see him and Chris having what looked like a serious discussion.

(Parole Interview Questionnaire at 2A.) Jordan subsequently drove Julius back to his parents' house where Jordan “insisted on turning on the news.” (*Id.*) According to Julius, “It was then that I learned that someone had been killed the night before in a robbery of a Suburban.” (*Id.*) “I think at that point things were starting to add up to me that Ladell and Chris were involved.” (*Id.*)

It was after midnight when Jordan called Julius and “asked [Julius] to pick him up at a laundromat because he was locked out of his grandmother's house.” (*Id.*) According to Julius, “He was insistent.” (*Id.*) Julius picked Jordan up and brought him back to Julius's parents' house. (*Id.*)

Julius recalls that, “I went to the living room couch to watch TV and called some girls on the family phone.” (*Id.*) “Chris said he needed to make some calls and went upstairs to use the other phone line in my bedroom.” (*Id.*) Julius’s older brother Antonio—who, at the time, worked the 10 p.m. to 6 a.m. overnight shift at a Texaco Travel Stop—recounts in a sworn statement that:

Shortly after I returned home from work sometime after 6:00 a.m. on Thursday morning, July 29, 1999 or Friday morning, July 30, 1999, I found Julius asleep on the couch downstairs. Chris Jordan, whom I knew as “Westside,” was sleeping in my old bedroom upstairs. This was my bedroom before I went to college. After I went to college, it became Julius’s bedroom. When Julius went to college, Julius and I both sometimes used the bedroom and kept some of our belongings in the room. I believe Antoinette may have also kept some things in the room after Julius went to college. The bedroom had an access to the attic through the ceiling in the closet.

(Commut’n Ex. 35, ¶ 4.) In an interview with police, Jordan admitted spending Thursday night at the Jones home:

Jordan: Wait, wait a minute, Thursday . . . nah, that’s when, that’s when I stayed the night at [Julius’s] house.

Fike: So you were at Julius’s house on Thursday . . .

Jordan: On Thursday night. And woke up at eleven o’clock on Friday.

(Commut’n Ex. 92 at 13.)

Julius recalls that, “By the time I woke up later on Friday morning Chris was gone.” (Parole Interview Questionnaire at 2A.)

C. Friday, July 30, 1999: Police—under pressure to make an arrest—consult their informants who point the finger at Julius

Police located Mr. Howell’s stolen Suburban outside of Central Grocery and just a few blocks from Lottie’s chop shop in the early morning hours of Friday, July 30, 1999. (Clemency Appx. 0062–0063; Commut’n Ex. 93 at 3.) Lottie, a longtime police informant, and his southside chop shop were well known to police at the time. (*See* Commut’n Ex. 114 at 16 (Lottie discussing his close relationship with detectives and the Oklahoma City Police, stating that “in fact a lot of

officers I had a couple of they cars down there that I worked on, for they, you know, you know, painting and . . . Mechanic work and stuff like that. . . . And they, they was in and out of there all the time[]”).)

Yet the official account of the police investigation into Mr. Howell’s murder concealed Lottie’s confidential informant status and his longstanding relationship with police and Oklahoma County prosecutors. Jurors were instead given the false impression that police stumbled across Lottie and his chop shop seemingly at random. (Clemency Appx. 0025 (prosecutor Sandra Elliott telling the jury that it was only “By fate, by chance, [police] pull into Kermit Lottie’s garage and start talking to Kermit Lottie”); Tr. V at 47–48 (Edmond Detective Tony Fike testifying that after locating Mr. Howell’s vehicle, police “just wanted to kind of get an idea of what the area looked like and how it was laid out. And as we drove down the street I saw like an auto body shop. . . . since the vehicle was stolen I thought maybe they might take it to a shop like that to either be worked on. . . . I spoke with Kermit Lottie. He was the owner of the body shop.”).)

Jurors were likewise left in the dark about King’s confidential informant status and his longstanding relationship with the Edmond police and then-Oklahoma County District Attorney Bob Macy. (Commut’n Ex. 112 at 34 (King affirming in an Aug. 3, 1999 police interview that “I know Mr. Macy. I, we, you know, you know my grandmother lived out in the country for 22 years out there. . . . I said, maybe if I can at least get in touch with Mr. Macy or Brent . . . Brent, his son. . . . Brent. I know these people.”).) Contrary to what jurors were told, it wasn’t Lottie who coincidentally happened to direct the police to King in the aftermath of the Suburban’s discovery. (See Tr. V at 51–54.) Rather it was King’s police handler, Edmond Detective Dennis Dill, who informed police that “we needed to find my informant Ladell King” upon learning that Mr. Howell’s vehicle had been stolen. (Commut’n Ex. 62, ¶ 7.) According to Detective Dill, “In my

experience working with Ladell, he had the pulse on all auto-thefts in the Oklahoma City metro area and would have information about the theft of the Suburban.” (*Id.*; *see also* Commut’n Ex. 8 (Edmond Detective Tony Fike also describing King as “an informant of mine when I worked on the D.A.’s task force” who also went by the nickname “Day Day”).)

Immediately, King directed the police to Julius as the perpetrator of Mr. Howell’s murder. The report of Oklahoma City Police Detective Jerry Flowers reflects that King told police “that he did, in fact, have the Suburban and he was trying to sell it, but the one who did the shooting was his friend, Julius Jones.”⁷ (Commut’n Ex. 93 at 5.) Specifically, King told police that “Julius was the one who was bragging about the shooting, stating he shot the man and took the Suburban. He stated Julius was wearing a red bandanna around his face and carrying a chrome .25 automatic at the time the shooting occurred.” (*Id.*) King also told police that Jordan was just “the driver in this homicide.” (*Id.* at 8.) According to police reports, “This was at 3:00 p.m., 7-30-99, when Day-Day was taken into custody and he offered this information to these detectives.” (Commut’n Ex. 93 at 5.)

At approximately 3:15 p.m., King provided police with directions to Julius’s parents’ home and drove with them to the Jones residence at 12104 Greystone Terrace to take Julius into custody. (Commut’n Ex. 93 at 5.) Meanwhile, an enormous police presence—consisting of Oklahoma City police, Edmond police, Gang Enforcement Units, S.W.A.T. teams, and Hostage Negotiators—was being marshaled and beginning to descend upon the Jones home. (*See id.* at 5, 6–8.)

⁷ As a confidential police informant, King faced no criminal charges in connection with Mr. Howell’s murder and the robbery of Mr. Howell’s vehicle despite admitting to police and prosecutors that he was in possession of Mr. Howell’s stolen GMC Suburban on the night of the murder and had tried to sell it the next day. (*See* Commut’n Ex. 62, ¶ 5 (Detective Dill attesting that “Ladell knew, because I told him, that by becoming a police informant he could give up information on other criminals, his cooperation would then be shared with the District Attorney, and he could get deals on his own charges **or avoid charges altogether**” (emphasis added))).)

From the back of an Oklahoma City police vehicle, King called the Jones home phone number at approximately 3:45 p.m. to confirm for police that Julius was inside. (*Id.* at 6.) At the time, Julius “was on the phone with a friend and received a call on the other line from Ladell.” (Parole Interview Questionnaire at 2A.) “The call was short. Ladell asked what I was doing, and I told him I was talking to a girl.” (*Id.*)

After King’s call with Julius ended, Oklahoma City Police Detective Jerry Flowers, who was with King outside of the Jones residence, called back. (Commut’n Ex. 93 at 6.) Julius recounts that:

A second call came in and the person on the other end asked if I was home. I knew something wasn’t right and figured it had to do with Chris. I knew he was up to no good but didn’t want to be in the middle of it, so I said Julius wasn’t there and hung up. I left to find out what was going on.

(Parole Interview Questionnaire at 2A.) At Julius’s trial, the prosecution sensationally claimed that Julius had “jumped out of the window and fled” his parents’ residence. (Clemency Appx. 0028.) In reality, however, Julius “didn’t sneak out [or] jump out of the window.” (Parole Interview Questionnaire at 2A.) Rather, he recounts that:

I left from the door in the back of the house that we always used to come in and go out. I noticed several police vehicles on my block. On the next block, I ran into Chris who was walking towards my house and said we should drive to Ladell’s apartment to find out what was going on.

(Parole Interview Questionnaire at 2A–2B.) At the time Julius left his parents’ residence to try to find out what was happening, he was well-within his rights because the police did not have a warrant for his arrest and only obtained one much later that evening. (*See* Clemency Appx. 0079 (search and arrest warrants obtained at 7:05 p.m. on July 30, 1999).)

Once at King's apartment, Jordan and Julius learned from King's girlfriend Vickson McDonald that "police had Ladell." (Parole Interview Questionnaire at 2B.) "Chris told her not to worry about it and that he was going to talk to the police." (*Id.*) According to Julius,

When we got back to the car, Chris asked me to tell his brother Laymon the police were looking for "us." I understood that to mean Chris and his brother, not Chris and me. Chris got out of the car near Macklanburg. I thought he was going to talk to the police like he said. I agreed to tell Chris's brother what was going on.

(Parole Interview Questionnaire at 2B.) While Julius drove to Laymon's southside apartment to tell him what was happening, police arrested Jordan at a pay phone near King's and McDonald's apartment. (*See* Clemency Appx. 0081.) According to Oklahoma City Police Officer J. Syzmanski, as soon as Jordan was apprehended he stated, "Don't hurt me! Don't hurt me! Julius did it, I was just there." (Clemency Appx. 0082.) Jordan's then-girlfriend Monica Pendleton recalled Jordan calling her this same day to ask her to get ahold of Julius stating that "if they (the police) get him (Julius) they will let me go!" (Commut'n Ex. 70, ¶ 4(b).)

Once in custody at approximately 6:45 p.m., Jordan was placed in the back of a police vehicle and immediately transported to the Jones residence where police awaited the issuance of warrants for Julius's arrest and to search the Jones residence. (Commut'n Ex. 93 at 8–9.) Meanwhile, Julius's parents—Madeline and Anthony Jones—and their two other children, Antonio and Antoinette, were forced out of their home at gunpoint. (*See* Commut'n Ex. 40.) After the warrants had been issued, Jordan directed the police search for the murder weapon from outside the Jones home. (Commut'n Ex. 93 at 10 (noting that "Christopher Jordan was telling Edmond Detectives that he thought the gun was on the roof . . .").) Police ultimately located a .25 caliber handgun wrapped in a red bandana in the attic of Julius's bedroom where Jordan had spent the night the day prior. (Commut'n Ex. 93 at 11.) They also located a .25 caliber magazine hidden underneath the doorbell chime in the hallway. (*Id.*)

D. Saturday, July 31, 1999: Julius is arrested and charged with murder, prosecutors seek the death penalty against him, and Edmond police coach Jordan on a narrative of Julius's guilt

It was approximately 6:00 a.m. when Julius was arrested at Laymon's apartment where he had fallen asleep. Julius recounts that:

I was arrested early Saturday morning at Laymon's apartment because I was afraid to go back to my house. I was in shock when I was arrested, handcuffed, and dragged to a police car. The officers were high fiving one another and told me: "You know you're gonna fry." While being transferred from an Oklahoma City police car to an Edmond police car, an[] officer removed my handcuffs and said, "Run nigger. I dare you, run." I stood frozen, knowing that if I moved, I could be shot and killed.

(Parole Interview Questionnaire at 2B.)

Shortly after Julius's arrest, Edmond Detectives Tony Fike and Theresa Pfeiffer sat down with Jordan to conduct a formal recorded interview about the carjacking and murder in Edmond. (Commut'n Ex. 92.) During that interview, Jordan told at least five versions of what had allegedly occurred; and through coaching by detectives, he developed the narrative he ultimately testified to at Julius's trial.

Version 1: Jordan initially claimed that on the evening Mr. Howell was killed, he was alone at his grandmother's house until 3 or 4 p.m. (Commut'n Ex. 92 at 3.) He subsequently picked Julius up and they went to the Macklandburg recreational center where they played basketball until around 7 p.m. (*Id.* at 4–5.) They then drove Jordan's '72 Cutlass "to go pick up [a] letter from [Jordan's] mom's house." (*Id.* at 6.) Between 8:30 and 9 p.m., they went to "Schlotzky's" and then to "Staxx" in Edmond where Julius got something to eat. (*Id.* at 6–7.) According to Jordan, they then drove "like a block in the neighborhood" when Mr. Howell's "'burban' was like in back of me" and "Julius is like, 'stop let me out.'" (*Id.* at 8.) After Julius allegedly claimed he wanted to

“pop the car,” Jordan “just let him out from there. That’s all[.]” (*Id.*) “I just left, . . . I just left from there.” (*Id.*)

Version 2: Jordan next told police that after leaving Schlotzky’s, “I had to go use the phone” at a convenience store and talked with a girl named “Quila and them for a little while.” (*Id.* at 9.) According to Jordan, after leaving the convenience store “I seen a brown ‘burban’ just pulled in” and Julius said:

“Stop the car,” I said, “For what?” And then he said, “Just let me out.” I said, “All right, just let you out.” He said, “I’m just gonna pop this car up.” And I said, “All right.” And then I went on about my way and went to Taco Mayo.

(*Id.* at 9.) Jordan claimed that after eating two burritos, he went to King’s house where Julius pulled up “three to five minutes later” driving “the brown ‘burban.’” (*Id.* at 10.) “I can’t say what he was wearing,” Jordan said, then adding that “he had like a bandanna like in his hand” that was “red.” (*Id.*) When asked by Detective Fike whether Julius “ha[d] a gun with him?” Jordan claimed that “I didn’t see the gun and him have a gun like, in the car[.]” (*Id.* at 10–11.)

Fike: Did he say anything about shooin someone?

Jordan: Just later on. Like . . .

Fike: Later on, what did he say?

Jordan: Later on like . . . me and Day Day [i.e., Ladell King]⁸ was talking, me and Day Day was talking like, no we didn’t really find out that he shot somebody until like the next day. . . . We didn’t really know he shot him until like the next day. Until he said, we was like, “come on tell us.”

Fike: Then what’d he say, when you said come on tell us.

Jordan: He’s not, he just, he said, it just went off on accident.

⁸ In a letter to U.S. Attorney Mary Smith, who was prosecuting Kermit Lottie on federal cocaine distribution charges at the time of Julius’s trial, Detective Fike described Ladell King as “an informant of mine when I worked on the D.A.’s task force” who also went by the nickname “Day Day.” (Commut’n Ex. 8.)

Fike: So he admitted to shooting him to you?

Jordan: Yeah.

(*Id.* at 11.)

In response to Detective Fike's question, "OK what point, did he tell you what he did with the gun?" the following exchange occurred:

Jordan: When, when he told us what he did?

Fike: What'd he tell you that he did with the gun?

Jordan: That was Thursday I think.

Fike: Thursday. He told you . . . told you what?

Jordan: That like the gun, is on top of the roof, he said, they can't (inaudible) be able to find it so . . .

Fike: **So you hid the the murder weapon?**

Jordan: **Yeah.** That's when I told (inaudible) on top of the roof or somewhere like that.

(*Id.* at 13–14 (emphasis added).) Although Jordan had initially denied ever seeing the gun, he subsequently admitted that "I did touch the gun. . . . It's a chrome gun" and "one night . . . I had the bullets in my hand." (*Id.* at 15.)

Version 3: After being told by detectives that they were "a little confused about a few things," Jordan changed his story again. (*Id.* at 29.) This time, he claimed that after leaving Staxx in Edmond, "like on the first block is where I dropped Julius off." (*Id.* at 31.)

I didn't go all, I didn't go in no neighborhood, and I just went to like the first block, it was the first block, and he said I'm just, he said "let me out the car, I'm gonna 'pop' this suburban up." That's all, I said, "That's your business," I went on about my way and went to Taco Mayo. I didn't have nothing to do with it.

(*Id.* at 31.)

Version 4: Detective Fike ultimately told Jordan that “it’s not adding up what you’re telling us.” (*Id.* at 34.) He urged Jordan to, “Tell us what really took place and how he [Julius] got way back in there right to this man’s house.” (*Id.* at 34–35.) Detectives Fike and Pfeiffer then proceeded to feed Jordan a narrative of what occurred that pointed to Julius as the perpetrator, and which Jordan endorsed with simple “Yeah” responses:

Fike: Chris, tell me the truth.

Jordan: I think . . .

Fike: Were you guys out cruisin around looking for a suburban for him [Julius] to pop? Pop up?

Jordan: I wasn’t, I wasn’t looking for no suburban . . .

Fike: **It [sic] that what he [Julius] was wanting to do though cruise around through Edmond look for a suburban? Is that how it took place? . . .**

Is that what he [Julius] was wantin’ to do, you guys were crusin’ around and he [Julius] was wanting you to drop him out so he could ‘pop’ up a suburban or steal a suburban, is that what was going on? Tell, tell the truth Chris, come on man, you’ve been helping us, helped us all night try to (inaudible). Do yourself a favor and tell us the truth here. Come on Chris, it’s not bad enough it will show that when you get in a court to testify. Tell us what really took place.

Jordan: **That’s what took place.**

Fike: **You was in there crusin’ around looking for one right?**

Jordan: **Yeah** (inaudible) But . . .

Fike: Just tell me, I know you were going to cough it up.

Jordan: We was crusin’ . . .

Fike: **You was just crusin’ in the neighborhood weren’t ya?**

Jordan: **Yeah.**

Fike: **And you were right there close to where the guy lived when you let him [Julius] out right?**

Jordan: **Yeah**, when I let him out.

...

Fike: **... you were actually in the addition crusin' around looking for a suburban ...**

Jordan: We didn't go all the way through the addition ...

Fike: **Yeah but you were just kinda ...**

Jordan: **Yeah.**

Fike: **But that's what you were out there doin' right?**

Jordan: **Yeah.**

Fike: **OK. ... that night you two were crusin' around lookin' for suburban so you could steal it? Correct?**

Jordan: **Yeah we was in the neighborhood, yeah.**

(*Id.* at 35, 37–39.)

Version 5: After telling Jordan that “you changed the story on us here a little bit,”

Detectives Fike and Pfeiffer coached him further:

Fike: ... Why don't you tell me exactly what happened? Please. I'm, I'm begging of you to tell me the complete story, and the truth on it. You're wanting to tell me. **Why don't you start changing your story.** Just come on out and tell the whole thing. Let's get it out here and get it over with. **It will show your cooperation.**

Jordan: All right. Actually, we had uh ... actually uh ... we had, we had seen like the suburban like, it was cruisin' like I think on the side of us. ... That's when I, that' when I ... Followed the suburban.

...

Fike: **Did you follow him all the way into his addition where he was at?**

Jordan: He had turned, **yeah**.

Fike: **So you left, you saw him pull into his driveway didn't you?**

Jordan: I seen him pull down that . . . I seen him pull down that road. **Yeah**.

Fike: **But I mean when you, you let Julius out, he knew that suburban had stopped.**

Jordan: **Right, right**, I seen . . .

Fike: **Is that right?**

Jordan: **Yeah**, I seen the blinkers turn on.

Fike: You seen him pull up in his driveway then, you knew he was gonna pull into a house?

Jordan: He pulled the blinker, I didn't see him pull like . . .

Fike: **But you knew he was gonna pull up in a house.** Did you wait until he [Julius] got that suburban going and left?

Jordan: Did I wait for him? No.

Fike: You didn't wait for Julius?

Jordan: I, that's what I said, I didn't hear no gun shots, I didn't see no gun shots.

Fike: **But how close, close enough to see the suburban pull out weren't ya?**

Jordan: **No, I wasn't.**

Fike: **You were there and close enough to see the suburban pull out when he [Julius], when he stole it, right?**

Jordan: **Was I, I was gone by the time he was . . .**

Fike: **Come on Chris.**

Jordan: **He got out of the car.**

Fike: Chris. You right close to telling me the whole truth I can, I can see it. Cause you're, the words you're saying is, is changing. I, I

analyzed your language, the words you used. And one minute you're there and one minute you're not. You're changing your language. **Just tell me the truth. Let's get this off, let's get this over with. You helped us.**

Jordan: **When I see Julius . . . the last part I seen was Julius like right by the tree at that house.** And that's when I left. . . . I didn't see no 'burban' or shots.

Fike: I know, I know you probably didn't, **I mean you probably couldn't see 20 feet away.**

Jordan: **Yeah.**

Fike: **But the suburban was up in his driveway. And you saw him up against . . .**

Jordan: **He was against the tree like . . . on this side of . . .**

Fike: **Did you follow him out there after he left that suburban?**

Jordan: Did I follow Julius?

Fike: Yes.

Jordan: Huh-uh, I went to Taco Mayo.

Fike: **Come on Chris, tell me the truth. You know you're not telling me everything. It's apparent that you know I know it.** That's why you're over there grabbing stuff.

Jordan: **Yeah, I followed him out sir.**

Fike: **You followed him out didn't you? After he got it? . . . So you followed him out and you saw that man laying there on the ground didn't you?**

Jordan: **I didn't see the man,** I see, well I, when . . . I was up here, I was up here and then Julius drove by me. Then that's when I, that's when I had drove off.

Fike: **Come Chris did you see him laying on the ground? You saw him laying there didn't you? You knew he was shot right then didn't ya? Come on Chris, you're just a better witness that way.**

Jordan: Shit.

. . .

Fike: I know but I mean **you saw him laying there didn't you? Huh? You saw him laying there on the ground didn't ya?** Did you see those other people run?

Jordan: I didn't know, I didn't know there was no kids. **I seen the man on the ground. I didn't see no kids or nothin. I seen a man on the ground. That's all I seen. I seen the man fall like backwards and that's, that's all I seen.**

Fike: **So you knew he [Julius] had a gun when he went up there to the suburban didn't ya?**

Jordan: No, I didn't . . .

Fike: But you knew he had the gun . . .

Jordan: I didn't know he had no gun. Yes, that's what I say, I didn't know he had no gun.

Fike: **But right after you knew he had a gun.**

Jordan: **Yeah.** That's, I though he gonna, he said he's gonna pop the car up. And that's, then I seen the man fall and then that's when, that's when he got in the car. And I was sitting (inaudible) and he drove past me. And then I followed, I followed behind the suburban.

. . .

Jordan: Day, Day been through a lot . . .

Pfeiffer: **You two have a conversation with Julius about the shooting? . . .**

Jordan: That's that's what I say we went to Day Day's house and they, Julius had got on the phone and I had made a call to a girl.

Pfeiffer: **Okay, but did you talk to Julius about, "why'd you shoot the guy?"**

Jordan: **We had talked about that like the next day.**

Fike: No, we're talking about right after it happened. **What really took place Chris? God Almighty you had to be bouncing off the wall when you saw that man fall. What did you say to Julius?**

Pfeiffer: **And what did he say to you?**

Jordan: **Oh jeez, “Chris,” he said, “the gun went off, I couldn’t help it it went off.”**

...

Pfeiffer: If you do not know he was gonna shoot this guy, I would think you’d have something to say to him about it. Or at least ask him. . . . **Why didn’t you ask him about it?**

Jordan: **I ask him about it like when we got in the apartments. We was in the apartments like later on. I say why, I say why, why you, “I say why you shoot him?” He said, just, that’s when he told me that the gun had gone off on accident.**

Fike: OK, wait a minute. You ask him why he shot him right off the bat? How’d you know that he’d shot him? How’d you know he didn’t just hit him in the head or something and knock him down? **You heard this . . .**

Jordan: **Yes sir.**

Fike: **You heard the gun . . .**

Jordan: **I heard the gun shot.**

Fike: **You heard the gun shot didn’t you?**

Jordan: **Yes sir.**

...

Fike: **You were pretty close to him I guess, right there. . . . you must have been pretty close, you saw him fall and heard the gun shot.**

Jordan: **Yes sir.**

(*Id.* at 43–54 (emphasis added).)

Unsurprisingly, Jordan—together with longtime confidential informants Lottie and King—would become the prosecution’s central witnesses against Julius at his capital murder trial.

III. The Trial: Breakdowns in the Adversarial Testing Process

Even before charges were formally filed, then-District Attorney Bob Macy announced to the media that he would seek the death penalty against Julius.⁹ See Bobby Ross Jr., Ed Godfrey, Melissa Nelson, & Jessica Carter, DA to Seek Death in Edmond Slaying, Suspect Innocent, Father Protests, NewsOK (Aug. 3, 1999), <https://www.oklahoman.com/article/2662577>; see also Ed Godfrey, Murder Counts Filed in Edmond Shooting Case, NewsOK (Aug. 5, 1999), <http://newsok.com/article/2662780>. In the wake of Macy's remarks, the print media echoed calls for Julius's execution reporting that "[t]o his credit, District Attorney Bob Macy has already decided to seek the death penalty, which this crime certainly deserves." (Commut'n Ex. 19.)

A. Julius is represented at his capital trial by inexperienced, overworked, and under-resourced public defense counsel who fail to put the prosecution's case to the test

"The integrity of our capital punishment system depends upon an accused being afforded competent and effective counsel. Capital defense relies on adequate funding and resources . . . Oklahoma's experience with wrongful convictions demonstrates the importance of ensuring justice in the first instance, rather than cutting corners in the early stages of a case."

—Report of the Oklahoma Death Penalty Review Commission at 102

Three attorneys with the Oklahoma County Public Defender's Office were appointed to represent Julius at his 2002 capital murder trial. None had ever before tried a death penalty case. (Commut'n Exs. 42–44.) According to Public Defender for Oklahoma County Robert Ravitz, although it was the policy of his office to assign only experienced capital trial lawyers as lead

⁹ According to the Oklahoma Death Penalty Review Commission Report, Macy "sought more death sentences than any individual district attorney in the U.S. The 54 cases he brought ending in a death sentence totaled 'more than the current death row populations of Colorado, Indiana, New Mexico, Utah, Virginia, Washington, and Wyoming combined. . . . One study found Macy to be one of just five prosecutors who account for 15 percent of the death row population nationwide as of January 2016.'" Okla. Death Penalty Review Comm'n, The Report of the Okla. Death Penalty Review Comm'n, The Constitution Project, 78–79 (Apr. 25, 2017), https://archive.constitutionproject.org/wp-content/uploads/2017/05/OKDPRC_Final.pdf.

counsel on capital cases, that policy was not followed in Julius's case. (Communit'n Ex. 31, ¶¶ 5–6.)

At the time he was assigned as lead counsel for Julius, David McKenzie "informed Mr. Ravitz at that time that I did not have any experience in death penalty litigation." (Communit'n Ex. 43, ¶ 5.) According to McKenzie, "I was terrified by this case due to my inexperience in death penalty litigation." (Communit'n Ex. 43, ¶ 10.) Second chair counsel, Malcolm Savage, had been a lawyer for a little over one year before being assigned to represent Julius. (Communit'n Ex. 44, ¶¶ 2, 4.) And third chair counsel, Robin McPhail, had just passed the bar exam in September 2000 when she was assigned to Julius's case in October of that same year. (Communit'n Ex. 42, ¶¶ 2, 4.)

McKenzie labored under a heavy caseload at the time and, just months before Julius's case went to trial, delivered a memorandum to his boss stating, "The problem we have encountered is that we simply do not have the time required to properly work on these [death penalty] cases because of our heavy caseload." (Communit'n Ex. 43, ¶ 4.) According to McPhail, "On multiple occasions, when I tried to talk with Mr. McKenzie or Mr. Savage about the trial, the response I received was that they were too busy and would work on it later." (Communit'n Ex. 42, ¶ 5.)

Of the three attorneys assigned to represent Julius, McPhail spent the most time with him in the lead up to trial. She visited Julius "on approximately 50 occasions in the Oklahoma County Jail[,] was "by myself approximately 95% of the time[,] and "only remember going to see Mr. Jones with Mr. McKenzie perhaps once." (Communit'n Ex. 42, ¶ 8.) By contrast, McKenzie estimated that he visited Julius only "on approximately ten (10) occasions in the Oklahoma County Jail" in the approximately two years between his appointment to Julius's case and trial. (Communit'n Ex. 43, ¶ 9; *see also* Communit'n Ex. 44, ¶ 7 (Savage estimating that he visited Julius only "on approximately 8–12 occasions" before trial).

As the only member of the defense team who spent more than just a few visits with Julius prior to trial, McPhail recounts that:

Nothing I personally learned from Mr. Jones indicated that he was anywhere but at home with his family at the time of the shooting. . . . Up until and including trial, [Julius's] parents were adamant that [Julius] was at home at the time Mr. Howell was shot.

(Comm. Ex. 42, ¶¶ 9, 12.) Spread thin by his active felony caseload, McKenzie “directed Rob Shelton, an investigator, to check out the alibi.” (Comm. Ex. 43, ¶ 7.) However Shelton was an investigator who, by McKenzie’s own account, was someone with whom he “had serious problems and concerns.” (Comm. Ex. 43, ¶ 12.) According to McKenzie:

In my experience, [Shelton] was completely untrained and unqualified to be interviewing witnesses or otherwise performing investigative functions. . . . Despite repeated requests, I almost never, if ever, got any written reports from Mr. Shelton. In fact, at this time, I cannot recall getting a single written report from Mr. Shelton though there may have been one or two.

(Comm. Ex. 43, ¶ 12.) Despite having grave doubts about Shelton’s competence and failure to memorialize witness interviews through written reports, McKenzie nonetheless outsourced to him the critical task of assessing the viability of Julius’s alibi defense. (Comm. Ex. 43, ¶ 7.) Having done so, McKenzie recalls that, “Mr. Shelton reported to me verbally that the person the parents claimed could corroborate the alibi, Brenda Cudjoe, said that [Julius] was not at home at the time of the shooting.” (Comm. Ex. 43, ¶ 7.) But that is not what Ms. Cudjoe told Shelton.

In a sworn statement, investigator Brenda McCray recounts her interview with Ms. Cudjoe about what transpired on Wednesday, July 28, 1999. According to Ms. Cudjoe, that day “she arrived at the home of Anthony and Madeline Jones on that morning at approximately 9:00 a.m.” (Comm. Ex. 37, ¶ 9.) She “spoke briefly with Julius at the time” and later “[ran] some errands” with Julius’s mom, Madeline. (*Id.*) Later that evening “she and her son ‘Scottie’ and Madeline left the Jones’ home and traveled to Kinko’s at 122nd and Western in Oklahoma City so that Ms. Cudjoe

could place a business card order” where they stayed “for well over an hour.” (*Id.*, ¶ 12.) Cudjoe went on to state that,

... after leaving Kinko’s, she and Scottie dropped off Madeline Jones at her home. According to Cudjoe, prior to exiting the vehicle, Madeline Jones invited Cudjoe and her son to eat a later supper with the Jones’ family. Cudjoe stated that Madeline told her they were having spaghetti. Cudjoe explained that she declined Madeline’s offer because she had a prior commitment at the home of her parents. Cudjoe believes it was approximately 8:45 p.m. or 9:00 p.m. on July 28, 1999 when she dropped Madeline off at the Jones’ residence. Cudjoe stated that she did not go inside the Jones’ home at this time.

Cudjoe stated that she has no knowledge of what persons may or may not have been within the Jones’ home at this time or at any time between 9:00 p.m. and 10:00 p.m. on July 28, 1999. Cudjoe stated that she is in possession of no information that would contradict any alibi offered by Julius Jones for the night of July 28, 1999 between 9:00 p.m. and 10:00 p.m.

(*Id.*, ¶¶ 13–14, 20.) Ms. Cudjoe relayed that she had previously spoken to Shelton about this over the phone and “was informed by Mr. Shelton that she would not be necessary as a witness in Mr. Jones’ defense[.]” (*Id.* at ¶ 6.)

Based on Shelton’s unreliable verbal report of his conversation with Cudjoe, McKenzie’s erroneous belief that Julius “wrote a letter to his girlfriend, Analiese Presley, stating he was on the south side at the time of the shooting,” and McKenzie’s belief that Julius was “some place other than the scene of the shooting” at the time of the crime, McKenzie “personally concluded that the alibi defense was untrue and declined to present it[.]” (Comm’n Ex. 43, ¶ 7; Rule 3.11 Tr. Vol. III at 47, 49-55, 58-59.) But when later asked whether he has ever been “able to find a letter that Mr. Jones written to Ms. Presley where he stated that he was on the south side?” McKenzie testified “No[.]” (Rule 3.11 Tr. Vol. III at 59.) Moreover, Analiese Presley—who McKenzie never bothered to interview before abandoning the alibi defense—has unequivocally stated in a sworn statement that “Julius Jones *did not* tell me that he was on the south side of Oklahoma City at the time of the shooting.” (Comm’n Ex. 38, ¶ 5 (emphasis added).)

Having abandoned the alibi defense, little else was done by the defense to prepare for trial. Savage recounts that, except for a phone interview with two people—Michael Peterson and his wife¹⁰—“my trial preparation consisted of reviewing the preliminary hearing testimony, police reports and transcribed police interviews, where available, and verbal statements from Rob Shelton regarding his interviews of the witnesses, to the extent he conducted interviews.” (Comm’n Ex. 44, ¶ 18.) According to McPhail, other than meeting with Julius’s family “[t]he *only* other first stage witness I recall interviewing was Eckie Prater and it was by telephone.” (Comm’n Ex. 42, ¶ 9 (emphasis added).) Meanwhile McKenzie recounts that, “Prior to trial, I do not recall personally interviewing *any witnesses* other than [Julius’s] parents and Manuel Littlejohn.” (Comm’n Ex. 43, ¶ 14 (emphasis added).) Littlejohn—who had spent time with Christopher Jordan in the Oklahoma County Jail—informed McKenzie that “Mr. Jordan admitted that he and not [Julius] was the person who shot Mr. Howell.” (Comm’n Ex. 43, ¶ 15.) Although Littlejohn had nothing to gain by offering this information, and although the prosecution’s key witnesses against Julius were convicted felons themselves, McKenzie decided not to call Littlejohn as a witness in Julius’s defense based on his view that Littlejohn “would not be believed by the jury” because he “was facing murder charges.” (Comm’n Ex. 30, ¶ 5(C).)

i. The Prosecution’s Case

Following Ms. Tobey’s testimony about her brother’s tragic murder and the robbery of his GMC Suburban on July 28, 1999, Kermit Lottie testified that Ladell King came by his auto-shop between noon and 2:30 p.m. the following day driving his Firebird and wanting to sell a Suburban

¹⁰ Michael Peterson testified that he was with his wife when they saw someone fitting the description of Chris Jordan driving an orange Cutlass and circling the parking lot at the Braum’s store in Edmond at approximately the same time Mr. Howell and his family were in the drive through. (Clemency Appx. 0037–0040.)

that matched the description of the one stolen in Edmond during the fatal shooting of Mr. Howell. (Tr. V 50-52, 75-77, 80-84; 94.) There was at least one other unidentified person in the Firebird. (Tr. V 77-79.) King had keys to the Suburban and, according to Lottie, claimed it came from a mall in Edmond. (Tr. V 92-93.) Lottie testified that he assisted the police in locating King. (Tr. V 51-60; 85.)

King testified that at approximately 9:30 p.m. on July 28, 1999, Chris Jordan arrived alone at the Renaissance Apartments where King lived driving a Cutlass. (Tr. V 139-42.) According to King, Julius arrived within twenty minutes driving a Suburban and wearing a stocking cap, red bandana, brown cotton gloves, jogging pants, and a white shirt.¹¹ (Tr. V 144-46; 157-62; 164-65; 202.)

King also testified that the following day, on Thursday, July 29, 1999, he picked Julius up at around 3:45 p.m., went back to his apartment, and Julius followed King driving the Suburban to the Central Grocery Store where he parked the vehicle. (Tr. V 167-172.) King identified himself and Julius on a security videotape from the grocery store that day. (Tr. V 172-77.) King testified that he drove his Firebird to Lottie's garage and Julius remained in the passenger seat while King spoke to Lottie. (Tr. V 177-80.) According to King, Lottie wasn't interested in the vehicle because of "some news broadcast of a guy getting killed over a Suburban." (Tr. V 179-81.) King testified that, after leaving Lottie's shop, he confronted Julius who denied knowing anything about the shooting in Edmond involving a Suburban. (Tr. V 181.)

King testified that he saw Julius later that evening at around 11 p.m. when Julius and Chris showed up in the Cutlass. (Tr. V 185-86.) According to King, Julius had previously called about

¹¹ In an August 3, 1999 interview with Edmond Detectives Tony Fike and Theresa Pfeiffer, King admitted that he'd previously seen "what the shooter was suppose to have on and everything . . . on the news." (Commut'n Exhibit 112 at 33.)

borrowing ten dollars. (Tr. V 186.) King testified that during a conversation between himself, Julius, and Jordan, Julius said, “the Suburban pulled up, the door came open, he saw a little girl waiving (sic) at him,” he thought Mr. Howell had a gun, and “the gun went off.” (Tr. V 187-96.)

King testified further that during a phone call with Julius early Friday morning, July 30, 1999, Julius indicated that it was just a matter of time before he got caught because he was worth a \$22,000 reward. (Tr. V 197-98; 200.) King told police that at some point, Julius said he was “a fool telling you I shot this man” because King might turn Julius into police. (Tr. V 198-99.) King was taken in for questioning by police at around 3:00 p.m. on Friday, July 30, 1999. (Tr. V 254-55; Tr. VII 170-74.)

King claimed that during his police interview, he got a page and directed police to the Jones family home at 12104 Greystone Terrace. (Tr. VII 176-77; 203; 207.) Oklahoma City Police Detective Jerry Flowers testified that he dialed the number on King’s pager at 4:00 p.m. and “[a] young man answered the phone that identified himself as Julius Jones” who agreed to come outside for questioning. (Tr. VII 179; 181-83; 187.) According to Flowers, within seconds the front door opened briefly, and unidentified person looked out, and the door slammed shut. Flowers testified that he called back and a young black female answered. (Tr. VII 183.) When asked to speak with Julius Jones, the female responded that he was not there. (Tr. VII 183.) After talking with another unidentified individual, Flowers testified that he “wasn’t for sure if [Julius Jones] had run out of the house or if he was still there or not.” (Tr. VII 184.) Flowers testified that he directed Edmond Police to get an arrest and search warrant. (Tr. VII 185.) According to Flowers, at approximately 4:00 p.m., Edmond police “started working on applying for the warrants” and, at Flowers’ request, Julius’s father, mother, brother and sister “came outside and talked to us.” (Tr. VII 185.)

Gordon Owens, a resident at the Renaissance Apartments and a friend of King's, testified that around 3:30 or 4:00 p.m. on Friday, July 30, 1999, Julius and Jordan "ran in and asked if I had seen Ladell [King], but by that time the police had already come and got him for questioning." (Tr. V 272-73.) Owens claimed that Julius told him police were at his house looking for him, and he got out through a window. (Tr. V 273.) Yet when asked by prosecutors to identify Julius in the courtroom, Owens testified that "I really couldn't tell you what he looks like now." (Tr. V at 268-69.)

King's girlfriend, Vickson McDonald, testified that on July 30, 1999, after the police had taken King in for questioning, Jordan came by her apartment looking for King, watched some news, and left. (Tr. VII 146-48.) She claimed that Julius later came by asking for King and stating that the police were at his house. (Tr. VII 148.) According to McDonald, Julius said he left his house through a second story window.¹² (Tr. VII 148.)

Jordan was arrested at approximately 6:00 p.m. at a Texaco at North Penn and Hefner while using a pay phone; he was immediately taken to Oklahoma City Detective Flowers who was near the Jones residence at the time. (Tr. VII 186-87; 241-44; 248.) Flowers claimed that, after interviewing Jordan, he had concerns about whether Julius was still inside his parents' residence. (Tr. VII 188.)

¹² McDonald first provided this account of Julius's alleged flight through a window in a July 20, 1999 interview with Edmond Detective Theresa Pfeiffer. (Clemency Appx. 0097-0098.) According to McDonald's friend and neighbor at the time, Toye Smith—who trial counsel never bothered to interview—McDonald and King "were trying to get the reward money that was offered to anyone who could help the police arrest the Edmond shooting suspect." (Commut'n Ex. 70, ¶ 4(c).) Savage, whose entire cross examination of McDonald spanned just *three* pages of transcript, failed to bring out for the jury McDonald's powerful incentives to lie about Julius—not only to protect her boyfriend King, but to recover the reward money as well. (Tr. VII at 151-53.)

After an Oklahoma City S.W.A.T. team cleared the Jones residence and determined no one was present, Edmond police began searching at approximately 11:30 p.m. (Tr. VII 206; 211-12; 245; 254-55; 267; 278.) Some of the items seized included a .25 caliber magazine with live ammunition found inside the doorbell housing unit on the stairwell wall. (Tr. VII 258-61; 266; 268.) Other items included a .25 caliber Raven semi-automatic chrome handgun wrapped in a red bandana found stuck in the insulation of an attic access in the ceiling of a closet in Julius's bedroom. (Tr. VII 271-73; 277; Tr. VIII 230-49; Tr. IX 195-96.)

FBI bullet lead analyst¹³ Kathleen Lundy testified that the two projectiles recovered from Mr. Howell and his Suburban, two of the .25 caliber automatic cartridges taken from the magazine found in the Jones residence, and eleven of the thirty (30) .25 caliber automatic cartridges found in the console of the 1987 Buick Regal¹⁴ originated from the same source of lead at Remington. (Tr. VIII 28-36.) McKenzie cross examined Lundy briefly over just two pages of transcript. (Tr. VIII at 37-39.) And when toolmarks examiner Terrance Higgs likewise got on the stand and testified that “[t]here is no doubt”¹⁵ that the bullets recovered from Mr. Howell and the Suburban

¹³ Bullet lead analysis and Lundy herself have both been discredited in the years since Julius's trial. Roughly 14 months after Julius was sentenced to death, Lundy pled guilty to a misdemeanor count of false swearing in connection with her “expert” testimony on bullet lead analysis in a case out of Kentucky nearly one month before she testified at Julius's capital trial. (See Commut'n Ex. 81.) More generally, bullet lead analysis has been thoroughly discredited as junk science and, in 2005, was discontinued by the FBI. Wendy J. Keon & C. Michael Bowers, Forensic Science Reform: Protecting the Innocent (2017); see also William A. Tobin, *Comparative Bullet Lead Analysis: A Case Study in Flawed Forensics*, The Champion (July 2004). The Report of the Oklahoma Death Penalty Review Commission includes junk forensic science among the contributors to wrongful convictions, particularly in capital cases. See Okla. Death Penalty Review Comm'n, The Report of the Okla. Death Penalty Review Comm'n, The Constitution Project, 13–39 (Apr. 25, 2017), https://archive.constitutionproject.org/wp-content/uploads/2017/05/OKDPRC_Final.pdf.

¹⁴ Jordan's DNA was found on a bandana in the same console in the Buick Regal where these .25 caliber bullets were found. (Tr. VIII 28-36.)

¹⁵ The Report of the Oklahoma Death Penalty Review Commission elucidates the problematic nature of such testimony, explaining that:

floorboard were fired from the .25 caliber Raven weapon recovered by police (Tr. IX at 195-96), McKenzie spent just one page of transcript cross examining him about the gun's ejection port (*id.* at 201-02).

During the early morning hours of July 31, 1999, Jordan's 1972 Cutlass was recovered at a 7-Eleven at 122nd and North Penn. (Tr. VII 189-98.) Jordan identified Ladell King's cousin, Demonde Coleman, from the 7-Eleven security videotape. (Tr. VII 189-93.) Coleman was taken into custody and police obtained an address for Jordan's brother, Laymon Jordan, at the Pickwick Apartments where Julius was arrested at 6:30 a.m. (Tr. VII 193-98; 203.)

Jordan testified that he and Julius had been driving around looking for a Suburban to steal since around 6:30 p.m. on July 28, 1999. Jordan testified that they spotted Mr. Howell's Suburban at around 8:30 p.m., followed it to Braum's, and then to a residential driveway when Jordan claimed Julius told him, who was driving, to stop two or three houses away. (Tr. VIII 146-65.) Jordan testified that Julius got out of the car with a stocking cap, gloves, a gun, and pulled a bandana over his face. (Tr. VIII 164; 167-69.) Jordan testified that within five seconds he heard a shot, got out, ran up to see what happened, heard a second shot maybe five seconds later, saw Mr.

For many forensic science disciplines, it has been common—and in fact encouraged—for analysts to testify to 100% certainty and a corresponding 0% risk of error regarding 'who or what is the source of an evidentiary print or marking.' ... Exaggerated expert testimony of this sort is problematic not only because it is unscientific and lacks empirical support, but because it forecloses inquiry by the legal decision maker into matters related to the reliability and accuracy of a forensic scientist's conclusions.

Okla. Death Penalty Review Comm'n, The Report of the Okla. Death Penalty Review Comm'n, The Constitution Project, 30 (Apr. 25, 2017), https://archive.constitutionproject.org/wp-content/uploads/2017/05/OKDPRC_Final.pdf; *see also* Commut'n Exhibit 83 at 153–54 (explaining that toolmarks analysis “remains a subjective decision based on unarticulated standards and no statistical foundation for estimation of error rates”).

Howell on the ground, and Julius patting on the ground apparently for keys. (Tr. VIII 164-65; 170.) Jordan testified further that Julius got into the Suburban, backed out, told Jordan to “come on” two times, and then Jordan followed Julius to King’s residence. (Tr. VIII 165.) Jordan also testified that, later that night, when he asked Julius what had happened, Julius said he was hiding behind a tree, a little girl waved to him and said “Hi” and the gun went off on accident. (Tr. VIII 173.) Although Jordan’s testimony, together with Lottie’s and King’s, provided the lynchpin of the prosecutions’ case against Julius, McKenzie’s cross examination of Jordan was cursory, spanning just 30 pages of transcript and amounting to only about 15 minutes. (See Tr. VIII 192-220.)

The parties stipulated that DNA testing proved that a hair taken from the white bandana found with .25 caliber bullets in the console of the 1987 Buick Regal was consistent with Jordan’s DNA and could not have originated from Julius. (Tr. IX 214-15.)

ii. The Defense Case

When the time came for the defense to present its case on Julius’s behalf, the following occurred:

THE COURT: Ladies and gentleman, the State of Oklahoma has rested.
Mr. McKenzie, you may call your first witness.

MR. MCKENZIE: Judge, the defense announces rest.

THE COURT: The defense rests.

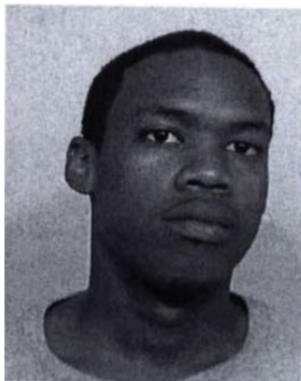
(Tr. IX at 216–17.)

Not a *single* witness was called in Julius’s defense. And unsurprisingly, he was found guilty. (Tr. X at 186-87.)

IV. What the Jury Never Heard: Evidence of Innocence

A. July 19, 1999 photograph: Julius didn't fit the eyewitness description of the shooter

Just days before Mr. Howell's murder, Julius was booked into the Oklahoma County Detention Center for reckless driving after the arresting police officer found him "doing doughnuts" in a parking lot. (Commut'n Ex. 5 at 5; Clemency Appx. 0103–0104.) The jury was never shown the photograph of Julius taken on that occasion which depicts his closely cropped hair—too short to have been sticking out half an inch from a stocking cap just days later, as Mr. Howell's sister Megan Tobey reported, whereas Jordan did fit that description:



Julius D. Jones, July 19, 1999
Booking Photograph No. 130029999



Christopher Jordan, July 31, 1999
Case No. CF-99-4373

Lead trial counsel David McKenzie later recognized in a sworn statement that:

I believe I was ineffective in establishing that Jordan was the person who actually fired the fatal shot and that King was involved in planning to take the Suburban. I believe that if I had been effective in establishing the true state of the evidence regarding Jordan and King, Mr. Jones would have been acquitted.

Among the defects in my representation: [] I failed to show the jury a booking photo, taken a few days before the homicide . . . That booking photograph, Booking Number 130029999, would have absolutely established that Julius Jones could not have been the shooter. By showing that Julius Jones did not have enough hair to stick out a half inch, the photograph not only would have shown that Mr. Jones could not have fired the fatal shot, but also would have discredited the entire testimony [of] Christopher Jordan. If the jury had known for certain (and they would have if the booking photograph had been presented at appropriate times) that

Mr. Jordan was lying on such a central point as the person who performed the shooting, I believe the jury would have been compelled to disregard the remainder of Mr. Jordan's testimony. Since Mr. Jordan's testimony was essential to the State's attempt to prove Mr. Jones was involved in the robbery of the Howell Suburban, an acquittal should have ensued from proving that Mr. Jones could not have been the shooter.

Although there was testimony at trial that Jones had short hair, the prosecutor argued in final closing argument that he may have received a haircut between the time of the shooting and the time of arrest. Using the booking photo would have disproved this theory of the prosecutor and would have established that Mr. Jones could not have been the shooter.

(Commut'n Ex. 30, ¶¶ 4, 5(A).)

B. Julius's alibi: he was at home with his family at 9:30 p.m. on July 28, 1999

The jury also never heard the testimony of Julius's mother, father, older brother, and sister who "were adamant that [Julius] was at home at the time Mr. Howell was shot." (Commut'n Ex. 42, ¶¶ 9, 12.) Julius's older brother, Antonio Jones, has said in a sworn statement:

I was present at the residence of my parents, Anthony and Madeline Jones, on Wednesday, July 28, 1999. I played cards and video games that day with Scottie Carrington. I specifically remember eating spaghetti for dinner that evening with my parents, my brother, Julius, and my sister, Antoinette, before leaving for work that night. I was employed at the Texaco Travel Stop at 122nd and I-35. I worked the night shift from 10:00 p.m. until 6:00 a.m. My usual practice during that time was to get a ride to work from my mother, Madeline, around 9:30 p.m. My mother took me to work that night at approximately 9:30 p.m. Julius was present when I left for work that night.

...

I was never interviewed by anyone from the Oklahoma County Public Defender's Office prior to trial. I did not accompany my parents to any meetings with Julius' trial defense team before trial. I was never asked to testify in either the guilt-innocence phase or the penalty phase of trial.

(Commut'n Ex. 35, ¶¶ 3, 6.) Julius's mother, Madeline Jones, has also said in a sworn statement:

I was present at my residence in Oklahoma City, Oklahoma, on Wednesday, July 28, 1999. Julius was at home most of the day. I specifically remember eating spaghetti for dinner that evening with my husband, Anthony, my sons, Antonio and Julius, and my daughter, Antoinette. Julius was definitely present between 9:00 p.m. and 10:00 p.m. on Wednesday, July 28, 1999. Julius was present when I left in time to get Antonio to work by 10:00 p.m. Julius may have left at approximately

11:00 p.m. that night. I went to bed not very long after returning home from taking Antonio to work.

...

I did not testify during the guilt-innocence stage of trial. . . . I informed Julius' trial attorneys that Julius was present at home between 9:00 and 10:00 p.m. on Wednesday, July 28, 1999, and could not have committed or been present at the shooting of Mr. Howell at approximately 9:30 p.m. . . . Julius' trial attorneys declined to call me as a witness during the guilt-innocence stage of trial. I was told that I was not needed as a witness during the guilt-innocence stage of trial.

(Commut'n Ex. 36, ¶¶ 3, 5.)

Julius's father, Anthony Jones, and his sister, Antoinette Jones, have likewise said in sworn statements that Julius was at home between 6:00 p.m. and 11:00 p.m. on July 28, 1999 and would have been willing to testify to that had they been called as witnesses in Julius's defense at trial.

(Clemency Appx. 0105, ¶¶ 3, 6; Clemency Appx. 0107–0108, ¶¶ 3, 8.)

C. Jordan admits his guilt: Four people attest that Jordan bragged about committing murder and setting Julius up to take the fall

The jury also never knew that four people—none of whom had anything to gain from coming forward—independently heard Jordan bragging about committing murder and setting Julius up to take the fall.

Emmanuel Littlejohn: In 2004, Littlejohn recounted in a sworn statement that while housed in the Oklahoma County Jail in “late August or early September of 1999, . . . I briefly shared a cell with a person known to me as Christopher Jordan[.]” (Commut'n Ex., ¶ 4.) According to Littlejohn:

During this period, Christopher Jordan made statements to me about his case and about his co-defendant, Julius Jones[.] Jordan stated that he felt guilty because he was going to implicate his co-defendant, Julius Jones, in a murder case to avoid getting the death penalty[.] Jordan stated that he had wrapped the gun used to commit the murder in his case in a bandana and hidden it in Julius Jones' house[.] Regarding the murder case, Jordan stated to me, “Julius didn't do it,” and “Julius wasn't there.” Jordan further stated, “D.A.'s going to make me a deal. I'm going to do fifteen years and go home.” During this time period, Jordan often remarked that he felt “bad” for what he was doing[.] At the time that I shared a cell with

Christopher Jordan, I had never met or spoken with Julius Jones; I have never shared a cell with Julius Jones in the Oklahoma County Jail[.]

(Commut'n Ex. 15, ¶¶ 5–13.)

Christopher Berry: Also in 2004, Berry came forward to reveal in a sworn statement that:

While I was in the Oklahoma County jail, I met a man by the name of Christopher Jordan. Mr. Jordan and I were in the same cell pod at the Oklahoma County Jail for approximately 2 years together. While Mr. Jordan and I were in the same pod, I overheard a conversation between Mr. Jordan and a man that went by the name of “Smoke.” I do not remember Smoke’s given name. Mr. Jordan was bragging to Smoke about how he was the actual person who shot the victim in his case. Mr. Jordan also said that because he was the first to talk to police, he was getting a deal and would not get the death penalty. He also said that his partner in the case was charged with capital murder. There were other times that I overheard Mr. Jordan telling his story. He seemed to like to brag about it.

(Commut'n Ex. 17, ¶ 4–6.) Only after Julius was convicted and sentenced to death did trial counsel

David McKenzie recognize that:

In retrospect, I believe I was ineffective for not following up on the Littlejohn information to see if it could be corroborated. If I had, I would have been able to corroborate Littlejohn with [Christopher] Berry’s information and perhaps with other information.

...

I had no strategic reason for failing to follow up on Littlejohn’s information to determine if there were more persons who had heard Jordan confess or if there was information to corroborate what Littlejohn said.

(Commut'n Ex. 30, ¶¶ 5(C), 6.) Had McKenzie followed up on, rather than disregard as not believable, the information Littlejohn provided, he would have learned that not only Berry, but also a man named Geary Birdine could corroborate Jordan’s admissions as well.

Geary Birdine (a.k.a. “Smoke”): In 2021, Birdine said in a sworn statement that he has “been known as ‘Smoke’” and “was in the Oklahoma County Jail from 1999 to 2002 awaiting trial on several felony charges. Those charges were dismissed by the State of Oklahoma in 2002.”

(Clemency Appx. 0110, ¶ 2.) Birdine recounts that:

While in the Oklahoma County Jail, I was housed in 6C. I came to know another prisoner named Christopher Jordan, who I knew as Westside, who was also housed in 6C. I also came to know Julius Jones, with whom I shared a cell for approximately one year. Christopher Jordan confessed to me, more than once when we were housed together in the Oklahoma County Jail, that he committed the murder that he was telling on someone else for. There were other prisoners in 6C that must have also heard Christopher Jordan say that to me. He said it more than once, almost bragging about it.

(Clemency Appx. 0110, ¶¶ 3-5.)

Roderick Wesley: Finally, in February 2021, Arkansas prisoner Roderick Wesley came forward to reveal that:

Between 2007 and 2017, I was housed at the East Arkansas Regional Unit, also known as Brickeys. Between 2009 and the end of 2010, I worked at Commissary and was housed in Barrack 19 at Brickeys. Sometime after working at the Commissary and being housed in Barrack 19, I came to know another prisoner by the name of Christopher Jordan, who I called Jordan.¹⁶ I worked with and was housed with him between 2009 and 2019. Jordan started working with me at the Commissary, as well as living in Barrack 19. Jordan and I became close friends. Along with working together, we played basketball after work. I did not know the reason Jordan was in prison.

One day while we were working at the Commissary store, I was telling Jordan about the crimes I was convicted of committing, and Jordan spilled his guts and told me about his crime. Jordan said to me, “my co-defendant is on death row behind a murder I committed.” He didn’t go into any details about the crime or give any names; he only said he killed a man. When Jordan was telling me this, he was acting like he was sorry for what he had done, but he said that he was not going to jump out there and give himself up to the wolves.

(Commut’n Ex. 33, ¶¶ 2-7.)

¹⁶ Following Julius’s conviction and death sentence, Jordan was shipped to Arkansas to serve out his sentence there under an interstate compact agreement. (See Commut’n Ex. 12 at 4 (Jordan plea agreement providing that Jordan “may be permitted to serve his sentence of incarceration @ a penitentiary located outside of Oklahoma[.]”); see also Commut’n Ex. 34 at ¶¶ 2-6 (investigator discussing, and including as attachments, Jordan’s Arkansas prison records which confirm Jordan and Wesley were housed and worked together from 2009 to 2010).)

Had Julius's jury been presented with all of this evidence demonstrating his innocence, we know from the sworn affidavits of three jurors that it would have made a difference. In a sworn affidavit, juror Colin White states that:

My impression of the defense team representing Mr. Jones was that they seemed inexperienced. They did not put on any counter evidence or attempt to impeach the district attorney's witnesses. If a credible alibi witness would have been presented, it might have made a difference in the case.

If a witness said that the co-defendant, Mr. Christopher Jordan, who testified against Mr. Jones, was bragging about being the actual shooter, it might have made a difference in the penalty phase of the case.

(Communit'n Ex. 27, ¶¶ 3–4.) Similarly, juror Max Newton has also said in a sworn statement that:

Julius Jones had three attorneys, but they did little. They did not offer a defense for Mr. Jones. The three of them did not seem interested or involved. The defense team had opportunity to give the jurors information, but did not do it. The defense team did not make much effort to cross-examine the district attorneys' witnesses.

If the defense team had an alibi witness or other witnesses saying Christopher Jordan was bragging about being the trigger man, they should have put those witnesses on the stand. Their testimony would be considered along with the other testimony.

(Communit'n Ex. 28, ¶¶ 3–4.) Juror Victoria Armstrong has also said in a sworn statement that:

I would have listened to an alibi defense from Mr. Jones's family members had his defense lawyers put on their testimony. I would have weighed their testimony against the other evidence that the prosecution presented.

If the defense lawyers at Mr. Jones's trial had put on testimony from witnesses that Christopher Jordan was bragging about committing, and getting away with, the crime while in jail, I would have listened to them even though they were facing criminal charges. I would have weighed their credibility against other evidence that the prosecution presented.

I remember that one of the prosecution's expert witnesses testified that he had "no doubt" about the bullet that killed the victim being a match to the weapon found in the home belonging to Mr. Jones's parents. This was a major factor for me in determining that Mr. Jones was guilty. At the time that I served on Mr. Jones's trial, I believed everything that this expert testified to and the defense didn't present any expert of their own to challenge his conclusions.

(Comm. Ex. 29, ¶¶ 10–12.)

V. Prosecutorial Misconduct: Concealing Evidence, Informants, & Deals

“Of the 34 exonerations in homicide cases in Oklahoma, four—two capital and two non-capital—involved jailhouse informant testimony.”

—Report of the Oklahoma Death Penalty Review Commission at 58

“The second most common reversible error identified on appellate or post-conviction review of capital cases was the ‘prosecutorial suppression of evidence that the defendant is innocent or does not deserve the death penalty.’

—Report of the Oklahoma Death Penalty Review Commission at 75

Before trial, Julius’s attorneys asked prosecutors to disclose any material in their possession relevant to the trial including, “[a]ll agreements btw the State and any of its witnesses reflecting said witnesses obtaining special or lenient treatment in pending or potential criminal cases in exchange for their testimony in this case[.]” (Comm. Ex. 47 at 4–5, ¶¶ 18–19.) They also asked for “[a]ll agreements between the State and any confidential informant(s) reflecting said confidential informant(s) obtaining special or lenient treatment in pending or potential criminal cases in exchange for their assistance or testimony.” (*Id.*) Yet the prosecution not only concealed King’s and Lottie’s confidential informant status from jurors and the defense, but they also hid a sweetheart deal they had struck with Jordan in exchange for his testimony against Julius.

Prosecutor Sandra Elliott elicited testimony from Lottie that he had no “promises or any deals” or “made any requests of the District Attorney’s Office” in exchange for his testimony against Julius. (Tr. V at 72.)

Q [Elliott]: . . . do you have any promises or any deals that you would expect to obtain from the State of Oklahoma in exchange for you being here to testify today?

A [Lottie]: No.

Q [Elliott]: Okay. You have – have you made any requests of the District Attorney’s Office?

A [Lottie]: Do you mean, like, for a deal or anything like that?

Q [Elliott]: Yes.

A [Lottie]: No.

...

Q [Elliott]: Okay. Do you expect that you are going to get more lenient treatment in exchange for testifying at this trial?

A [Lottie]: No.

(Tr. V at 72-73.)

At the time Elliott elicited this testimony, however, Lottie had been a confidential informant for the Oklahoma County District Attorney's Office since at least the mid-1990's when he helped secure death sentences against Paris Powell and Yancy Douglas, who were later exonerated. (Commut'n Ex. 58 at 47.) Lottie was also facing federal cocaine distribution charges at the time and told the jury not only that his testimony against Julius "is not going to help me" in his federal criminal case, but also that he had "never asked for any help from the State of Oklahoma." (Commut'n Ex. 48 at 158-62.)

Two days earlier, however, Lottie had written a letter to Elliott in which he described helping Oklahoma County Assistant District Attorney Brad Miller "get some big time evidence" in the death penalty prosecutions of Paris Powell and Yancy Douglas, offered to provide her with information about others, and asked for "a little help myself." (Commut'n Ex. 52 at 1.) And just three days after Julius was sentenced to death, Lottie too was sentenced in his federal criminal case and—at the behest of Edmond Detective Tony Fike and Oklahoma County and federal prosecutors—received a "very significant" four-level downward departure from the U.S. Sentencing Guidelines. (Commut'n Ex. 7 at 5; *see also* Commut'n Ex. 50 (Detective Fike asking federal prosecutor for sentencing leniency for Lottie on pending federal cocaine distribution charges due to Lottie being a "key witness" in the prosecution's case against Julius).) Rather than

face the statutory maximum penalty of 40 years imprisonment and/or a \$2,000,000 fine, Lottie was instead sentenced to just 7 years in prison and 5 years of supervised release. (Commut'n Ex. 7 at 3, 5–6; Commut'n Ex. 56 (sealed document revealing why Lottie was “rewarded very significantly” in his federal drug distribution case just three days after Julius was sentenced to death).)

When Jordan took the stand, Elliott asked him about the deal he obtained in exchange for his testimony:

Q [Elliott]: Can you tell the jury what sentence you received on those [murder and conspiracy] charges?

A [Jordan]: On the Murder 1 count I received life with suspended, **30 years to do**, and on the conspiracy to rob I received 10 years.

Q [Elliott]: So on Count 1 of the Information, which was Murder in the First Degree **you received a life sentence?**

A [Jordan]: **All suspended –**

Q [Elliott]: **Hold on.**

A [Jordan]: Yes, I'm sorry.

Q [Elliott]: All to be suspended **except you have to serve the first 30 years; is that correct?**

A [Jordan]: Yes, ma'am.

...

Q [Elliott]: **So you're doing a total of 30. . . . You are doing a 30-year sentence, correct?**

A [Jordan]: **Yes, ma'am.**

(Tr. VIII at 94–95 (emphasis added).) Elliott also told jurors in argument that, “Mr. Jordan has already entered a plea of guilty to the crime of Murder in the First Degree and has received a life sentence except **only the first 35 years of that life sentence has to be served.**” (Clemency Appx.

0026–0027 (emphasis added).) But in an interview the year after Julius was sentenced to death, Jordan revealed that:

[P]rior to testifying in Oklahoma County Case No. CF-99-4373 he had made a plea agreement with Oklahoma County prosecutors, and that in exchange for his “cooperation,” he would receive a life sentence with all but the first thirty (30) years suspended for his purported involvement in the crimes therein. Additionally, Mr. Jordan stated that Oklahoma County prosecutors led he and his counsel to believe, regarding the thirty-year portion of his sentence which was unsuspended, that the time served on the sentence would be calculated by the Department of Corrections in such a way that he would actually serve only twelve (12) to fifteen (15) years of that thirty years before being released from prison to serve out the remainder of his sentence on probation. Mr. Jordan explained that he did not agree to serve the time day for day and that his expectation was that he would not do so[.]”

(Comm’t’n Ex. 14, ¶ 5.) Just as he had been promised, Jordan was released from custody in December 2014 after serving only 15 years in prison. (DA Comm’t’n Appx. 22 (attesting that Jordan discharged his sentence on Dec. 5, 2014).)

Concealing deals struck with cooperating prosecution witnesses and engaging in misconduct weren’t new activities for prosecutors like Elliott who were groomed within Bob Macy’s District Attorney’s Office. According to the Report of the Oklahoma Death Penalty Review Commission:

A 2016 study found that prosecutorial misconduct occurred in a third of death penalty cases during the 21-year tenure (1980–2001) of Oklahoma County District Attorney Robert Macy. Prosecutorial misconduct in the death penalty cases brought by Macy contributed to the exoneration of three individuals subsequently freed from death row. Twenty-three of Macy’s 54 capital convictions relied on the testimony of disgraced police chemist Joyce Gilchrist. According to a recent report, courts reversed almost half of the death sentences imposed in Oklahoma County under Macy’s tenure.

Okla. Death Penalty Review Comm’n, The Report of the Okla. Death Penalty Review Comm’n, The Constitution Project, 80–81 (Apr. 25, 2017), https://archive.constitutionproject.org/wp-content/uploads/2017/05/OKDPRC_Final.pdf.

Years before she prosecuted Julius, Elliott was criticized by the Oklahoma Court of Criminal Appeals for misconduct in an earlier case for, among other things, making improper arguments to the jury, embellishing and misrepresenting the prosecution's evidence at trial; and failing to disclose information about the benefits that prosecution witnesses received for their testimony including "early release." (Commut'n Ex. 63 at ¶¶ 54–63.) In Julius's case, Elliott did all of these things and more.

Although prosecutors were ordered by Oklahoma County District Court Judge Jerry Bass to disclose to the defense the criminal records of all prospective jurors to ensure a full and fair jury selection process (*see* Commut'n Ex. 64), the prosecution nonetheless hid from the defense the felony records of a white man named Christopher Whitmire who, during jury selection, claimed to have only "[t]raffic-related offenses" when the trial court asked about his involvement in the legal system "under any circumstances[] . . . either as a witness, a plaintiff, or as a defendant." (Commut'n Ex. 65 at 91, 96.) In reality, Whitmire had pleaded guilty to two felonies in the mid-1980s. (Commut'n Ex. 66.) And although the prosecution removed black people from jury service based on their prior arrests or criminal charges, Whitmire remained on the jury despite having two felony DUIs. (Commut'n Ex. 65–66; Tr. III at 206–08 (Elliott striking black prospective juror Young, claiming that "she has received a deferred sentence out of Oklahoma County on bogus checks" and had previously "arrested"); Tr. III at 210–11 (Elliott striking black prospective juror Bolfrey because he "has a criminal record").)

Beyond failing to disclose the prior felony record of a seated juror, the prosecution also concealed the felony record of Gordon Owens—a friend and neighbor of Ladell King who claimed that he saw Julius with the Suburban on the evening of the murder despite not knowing what Julius looked like and not identifying Julius in court when asked to do so. (Tr. V at 268–69, Tr. 272–73.)

Court documents show that the year before Owens testified against Julius, Owens had been charged with false personation felonies for lying about his identity when pulled over by police officers on two occasions. (Comm. Exs. 71–72.) They also show that Owens committed burglary and robbery in 1996 and was convicted and sentenced for those offenses. (Comm. Exs. 73–74.) The jury never knew any of this.

VI. Clemency: A Failsafe Against Wrongful Convictions & Executing the Innocent

“There is no one cause of wrongful convictions. Instead, it is most often a combination of factors that implicate multiple components of actors within the criminal justice system, as well as external factors, such as community pressure to identify a perpetrator after a high-profile murder.

For the 10 men exonerated from Oklahoma’s death row, multiple factors led to their wrongful conviction, including false confessions, mistaken eyewitness identification, false or misleading forensics, the use of jailhouse informants, official misconduct, and ineffective assistance of counsel.”

—Report of the Oklahoma Death Penalty Review Commission at 42

The U.S. Supreme Court has described clemency as “deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.” *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993). “Executive clemency has provided the ‘fail safe’ in our criminal justice system. . . . It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.” *Id.* at 415. “But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.” *Id.*

Here, the record is replete with evidence jurors never heard demonstrating that Julius Jones did not kill Paul Howell, and that a multitude of now well-understood systemic failures led to Julius’s wrongful conviction for that crime. “Recent authority confirms that over the past century, clemency has been exercised frequently in capital cases in which demonstrations of ‘actual

innocence’ have been made.” *Herrera*, 506 U.S. at 415 (citing M. Radelet, H. Bedau, & C. Putnam, In Spite of Innocence 282–356 (1992)). It is precisely because the system sometimes gets it wrong that clemency exists as a bedrock failsafe—as a way to prevent more innocent lives from being lost, to correct manifest injustices beyond the judicial system’s reach, and to extend mercy even to those who our flawed system has decided are beyond redemption.

We humbly ask this Honorable Board and the Honorable Oklahoma Governor Stitt to intercede to prevent another tragedy scheduled to occur on November 18, 2021 if Julius is executed by commuting Julius’s death sentence to time served or to life with the possibility of parole.

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